

REMARKS

Applicants have canceled claims 1-56 and added new claims 57-75. The new claims include independent claims 57, 64 and 70. Method claim 57 includes the limitation of “in subsequent information presentations, increasing the use of those instructional strategies having a weight indicating a greater likelihood of greater success of the student's instruction”. The Siefert reference does not disclose the use of weight values for the selection of instructional strategies, and therefore applicants assert claim 57 is clearly not anticipated or made obvious by that reference.

Claim 64 is to a system comprising “a learning management engine ... setting initial weight values to a plurality of instructional strategies corresponding to the instructional strategies stored to said data store, the initial weight values optionally determined from values set in preparation of the course material, said learning management engine referring to the weight values to increase the use of those instructional strategies having a weight indicating a greater likelihood of greater success of the student's instruction. Again, the Siefert reference does not disclose the use of weight values for the selection of instructional strategies, and therefore applicants assert claim 57 is clearly not anticipated or made obvious by that reference.

Method claim 70 includes the limitation “in subsequent information presentations, choosing instructional strategies in a random pattern, the choice of strategies favoring the use of those instructional strategies having a weight indicating a greater likelihood of greater success of the student's instruction, the choice of strategies further favoring instructional strategies that require an available bandwidth below the bandwidth setting.” Applicants assert that the Siefert reference does not disclose the (1) use of weight values for the selection of strategies, (2) choosing instructional strategies in a random pattern, and (3) favoring instructional strategies that require an available bandwidth below a bandwidth setting. Claim 70 is therefore not anticipated nor made obvious by the Siefert reference.

All the remaining claims depend on one of those three independent claims, and are therefore not anticipated nor made obvious by the Siefert reference.

Applicants refer to the interview summary of Oct. 7, 2004 prepared by the examiner, which includes statements of features not disclosed by Siefert, which features are believed to be included in new claims 57-75. Applicants therefore request examination of new claims 57-75, and prompt allowance thereof.

Applicants now address the items of the office action mailed June 2, 2004.

1. The office has rejected claims 1-22, 24-44 and 46-56 under 35 U.S.C. 102(e) as being anticipated by Siefert (USPN 6,386,883 B2), and maintains the rejections of the prior office action.

The claims of that rejection have been canceled, making that rejection moot.

2. The office has rejected claims 23 and 45 under 35 U.S.C. 103(a) as being unpatentable over Siefert, and maintains the rejections of the prior office action.

The claims of that rejection have been canceled, making that rejection moot.

3. The office presents response to the previously filed arguments of the applicants, which the applicants now rebut.

The office has taken the position that a "RESOURCE" is a "strategy" relying on Siefert col. 9 lines 7-8 which states that "... multiple RESOURCES which represent the multiple strategies." Applicants point out that the meaning of "represent" cannot imply the equivalence of

“RESOURCES” and “strategies.” Applicants note that Siefert at col. 12 line 32 discloses a “standard curriculum, which is a mix of both styles” (styles being learning styles, to which particular teaching strategies are applicable.) Continuing at that location, Siefert discloses that “if, however, a student displays a dear preference for one style, he/she will be branched into a curriculum which favors explanations and examples in that style.” Applicants therefore assert that “RESOURCES” according to Siefert are prepared in using a mix of strategies, and therefore the assessment of “whether the RESOURCES are successfully imparting the knowledge desired to the students” (col. 9 lines 11-12) does not result directly in an assessment according to strategies, without some additional step undisclosed by Siefert.

The office has taken the position that a reasonably broad definition of “rank” is to “take precedence over”, and applies that definition to Siefert to argue that because a strategy is chosen, the chosen strategy must be ranked “with a higher position than the strategies that are not selected.” The office thereby would have one believe that because a strategy is chosen in a system, it must have been chosen on the basis of rank. Indeed, the presentation in any strategy where another is available would fall under the interpretation of the office, and would render the limitation meaningless. The interpretation of the office as to “rank” or “ranking” is therefore unreasonably broad. For example, Siefert could have disclosed a fixed ordered selection of strategies to be used, which would not require a strategy ranking. Applicants maintain that Siefert makes no disclosure of the ranking of strategies under a reasonable interpretation.

The office has further asserted that the feature of “optimizing the presentation of information by increasing the use of those instructional strategies having a higher ranking than the other instructional strategies” is clearly disclosed at col. 9 lines 52-56 and col. 12 lines 28-35. As stated above, Siefert does not disclose the ranking of strategies, not even in those locations.

The office argues that Siefert discloses all of “a presentation engine” (col. 9 lines 5-10 and fig. 1), a “data store” (col. 5 lines 4-11), an “assessment engine” (fig. 2), a “learning management

system” (fig. 1), “data entry means” (col. 5 lines 4-11), “display means” (col. 15 line 15) and a “content development tool” (col. 5 lines 4-11). The office has a duty under 37 CFR 1.104(c)(2) to provide the pertinence of each reference, if not apparent, clearly explained. Applicants assert that the office has yet to show all of the above elements in Siefert. For example, Siefert at col. 5 lines 4-11 discloses a “Continuous Learning System” which “acts as a storage facility for materials which are generically called RESOURCES.” That system does not appear to provide for “content development”, and the office has yet to point out in Siefert an object that includes that provision.

Applicants further disagree that Siefert discloses summaries of concepts, or the generation of evaluation instruments.

The office further argues that Siefert discloses the feature of tracking the frequency of use of each instructional strategy, relying on col. 16 lines 16-21. That portion of Siefert is referring to a “entry adventure” for the purposes of establishing a profile for “Johnny”. In that operation, the system does not select learning styles for the student, but rather relies on the student to select one himself. A system according to claim 10 does not require an entry adventure to establish a student profile, and is therefore distinct.

The office argues that the claim language (of claims 13 and 35) does not require that “the author be able to make assignments”. Although that is true, it is not material to those claims. Claim 13 requires the step of “assigning a task to an author to develop content for the information to be presented”. An assignment to, not from, an author is required. Likewise, claim 35 requires a “content development tool [that] allows at least one assignment to be given to at least one author to develop the information.” An assignment to an author, made by a content development tool is required according to claim 35. Siefert offers little as to how instructional content is to be created, as Siefert is not concerned with the creation of that content. The reference at col. 6 lines 26-39 describes a CUSTODIAN that controls RESOURCES (content), but does not create

content nor make assignments for the creation of content. Applicants maintain their position.

The office argues that Siefert discloses providing assignments to students to be performed outside of a learning session, relying on col. 15, lines 11-43. In that reference the student is given a “customized remedial content for the unit ... [that] will include new explanations, examples, and practice sessions”. That remedial content is merely customized lesson given to the student in the same way as the prior presented lessons. If we take the prior presented lesson to be “inside a learning session”, the customized content cannot be “outside a learning session” in a system according to Siefert.

The further arguments of the office, while purporting to “clearly” show claims limitations, fall short. For example, col. 8 lines 7-18 is purported to “clearly” disclose the step of “establishing prerequisites needed by the student to enable the student to view the information”. Siefert discloses the old concept of “material [that] is required as a prerequisite to understanding later material”, as has been done in primary and secondary education curricula. Thus, in that concept, prerequisites are chosen to be presented to a student before other subjects for the purposes of increased comprehension of the later subject material. Prerequisites needed for viewing might be selected to increase the understanding of later material, but might also be selected, for example, to create a focus on earlier material or to decrease confusion between conflicting subjects. Although, in Siefert, an order of prerequisites might be chosen, there is no indication that a student is intended to be prevented from viewing prescribed later materials, should a student wish to. The limitation of “determining whether pre-requisites needed by the student to enable the student to view the information have been satisfied” is therefore distinct from the disclosure of Siefert.

The office has further characterized applicants' earlier remarks as “misleading and inaccurate” in reference to the building of profiles based on the performance of instructional strategies, pointing to col. 10 lines 37-47 of Siefert. Applicants' statements are not misleading and inaccurate, and

further applicants believe that such a conclusion could only be reached in error. Applicants' prior statement was that in Siefert "a student's preference is made prior to the learning process, and is not based on the performance of instructional strategies." In the office's very reference in col. 10 at line 43 on this point it says "The invention then ascertains the student's preferred learning style through an entry adventure." The entry adventure referred to is of a type described in col. 16, lines 6-28, in which the student "can determine whether Johnny has a preferred learning style" in which "Johnny is frequently asked which of these [two] guides he wants to ask for advice". That profile is not based on the student's performance of instructional strategies, but rather a determination of which "guide" he prefers to listen to. The reference in col. 16 is used by the office to rejecting other claims, but for reasons the applicants cannot know is forgotten in rejecting claims 18 and 24. Even if the reference at col. 9 lines 52-56 were used to support the office's statements on this point, that would not show the building of profiles based on the performance of instructional strategies. Applicants maintains their position on this point.

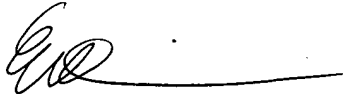
The office further imputes that "applicant concedes that Siefert does not teach a predetermined order of presenting each instructional strategy" as support for stating that Siefert implies an orderless or random presentation of instructional strategies. That argument defies logic. What applicants actually said was that Siefert "does not suggest the order in which a different teaching strategy would be chosen." Applicants maintain that neither ordered nor unordered presentations are disclosed by Siefert, except perhaps to the extent that strategies are ordered in pre-selected curricula as disclosed in col. 12 lines 28-35 (which ordering would not be determined by a system at the time of presenting to a student, but rather by a person in creating a fixed curriculum).

Should the office have put forward arguments of particular disclosure in Siefert that have not been addressed above, that may not be interpreted to be an admission of agreement on the part of the applicants, at least because of the frequency of error in the arguments of the office. Applicants therefore reserve the right to seek to patent the subject matter of any prior claim at a

later time, perhaps in a continuing application.

The applicants' representative would be grateful to be contacted at the below telephone number, should there be any questions.

Respectfully submitted this 2 day of November, 2004.



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